

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 2-13-09
BILL NO. SB351

**Opposition to
SENATE BILL NO. 354
INTRODUCED BY D. LEWIS**

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING AIRPORT AUTHORITIES AND DISPOSAL OF AIRPORT PROPERTY; ALLOWING AN AUTHORITY TO ENTER INTO CONTRACTS, LEASES, AND OTHER ARRANGEMENTS FOR THE SUPPORT OF AIRPORT OR NAVIGATION FACILITY OPERATIONS; REMOVING REFERENCE TO DISPOSAL OF COUNTY PROPERTY IN AIRPORT PROPERTY DISPOSAL PROVISIONS; AMENDING SECTIONS 67-11-211 AND 67-11-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

This bill is an end run around a local Helena fight presently being litigated in Judge Sherlock's Court. This bill would moot the issues in litigation which require Airport Authorities to follow the same rules all counties are bound by when disposing of its property as called for in Montana law.

The proposed amendment to Section 67-11-232, MCA allows an Airport Authority to develop its own rules irrespective of state law and as long as the local governing body approves of the rules, they become the "law" of the Airport Authority. **This creates a dichotomy in the law** as Municipal Airports (city and county operated airports such as Billings) must comply with state law or their charter in disposing of property pursuant to Section 67-10-222, MCA, but a Regional Airport created by a city and/or county such as Helena would be able to make up its own rules.

This bill further establishes any Airport Authority as a **public development agency** using public resources **to unfairly compete with private enterprises** seeking to lease or build for the same private clients **without being bound** by Montana Statutes to which the State, Counties and Cities are subject.

Such **Public Development** deprives jurisdictions from income taxes on revenues derived from these private clients for all time. It provides tax free public lands for competing development. (Private users pay property taxes, but the Authority, until the private use is established, develops and holds the land tax free.) Where Airport Authorities own a building leased to a non-aeronautical tenant, no property taxes are paid on the improvements and, again, no income tax is paid on the lease receipts.

In **statute 67-11-211** the addition of the language **"or for the support of"** is intended to allow the airport to simply declare any lease valid whether it involves the operation of the airport or not. That is, the Airport Authority could lease a building or land to Burger King or J.C. Penny's, for example, and say that the revenue from the lease "supports" the airport. It would essentially gut the intent of this statute which is directed at airport operations. Furthermore, if this passes, it moots the second "disposal" statute **67-11-232** because any lease will fall under the category of "support of" the airport.

Statute 67-11-232 is essentially the companion statute to **67-11-211** which deals with property which is **not** used for airport operations and is therefore "disposed" of as unnecessary to the mission of the Airport. Here, the bill seeks to take out the language that requires the disposal rules to conform to the statutes **"for the disposal of county property"**. This means that the airport rules don't need to follow statutory guidelines for any jurisdiction, i.e. city, county or state.

This puts the Airport Authority above the law and relies on the judgment of the local governing body, here the city and the county jointly, to set the standard which may be, and, in the case of the Helena airport, are less stringent than the statutes required for similar disposals by the city and county. For example, lease terms, public auctions of disposable property, appraisals and the like are defined in statutes which would not need to be followed here. All this gives more latitude to the appointed Airport Board than is afforded to the elected commissions.

At the Helena Airport, the result is public development of public land which threatens the public safety by locating large concentrations of people (by entities which would traditionally lease or buy from private tax-paying developers) on private land on public property at the end of the main runway.

Respectfully,

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 67-11-211, MCA, is amended to read:

"67-11-211. Granting of operation and use privileges. (1) In connection with or for the support of the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 40 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility of or space in the airport or air navigation facility for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, ~~which~~ The charges, rentals, or fees must be reasonable and uniform for the same class of privilege or service, ~~provided that the public may not be deprived and may not result in the public being deprived~~ of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility of the airport or air navigation facility.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 40 years the privilege of operating, as agent of the authority or

1 otherwise, any airport owned or controlled by the authority, ~~provided that a~~ A person may not be granted any
2 authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other
3 arrangements in connection with the operation of the airport which the authority might not have undertaken under
4 subsections (1) and (2)."

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6 **Section 2.** Section 67-11-232, MCA, is amended to read:

7 **"67-11-232. Airport property -- disposal.** Except as may be limited by the terms and conditions of any
8 grant, loan, or agreement authorized by 67-11-305, an authority may, by sale, lease, or otherwise, dispose of any
9 airport, air navigation facility, or other property or portion of or interest in an airport or facility acquired pursuant
10 to this chapter. The disposal by sale, lease, or otherwise must be in accordance with the ~~adopted~~ rules of adopted
11 by the authority, which rules must be and approved by the local governing body, ~~for the disposal of county~~
12 ~~property,~~ except that in the case of disposal to another authority, a municipality, or an agency of the state or
13 federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected
14 in a manner and upon terms as the commissioners of the authority consider to be in the best interest of civil
15 aviation."

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17 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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